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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 4th July, 2017
Pronounced on: 17th July 2017

\+ **ITA 290/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3

.....Appellant

Versus

PPC BUSINESS AND PRODUCTS PVT. LTD. ..... Respondent

\+ **ITA 605/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3

..... Appellant

Versus

SURYA VINAYAK INDUSTIRES LTD. ..... Respondent

\+ **ITA 606/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3

..... Appellant

Versus

SURYA VINAYAK INDUSTRIES LTD. ..... Respondent

\+ **ITA 607/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

SURYA VINAYAK INDUSTRIES LTD. ..... Respondent

\+ **ITA 608/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

SURYA VINAYAK INDUSTRIAL LTD. ..... Respondent

\+ **ITA 609/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

SURYA VINAYAK INDUSTRIES LTD. ..... Respondent

\+ **ITA 610/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

J.H. BUSINESS INDIA PVT. LTD. ..... Respondent

\+ **ITA 637/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

SANJAY JAIN ..... Respondent

\+ **ITA 638/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

SANJAY JAIN ..... Respondent

\+ **ITA 639/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

J.H. BUSINESS INDIA PVT. LTD. ..... Respondent

\+ **ITA 640/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

J.H. BUSINESS INDIA PVT. LTD. ..... Respondent

\+ **ITA 641/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

J.H. BUSINESS INDIA PVT. LTD. ..... Respondent

\+ **ITA 850/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Versus

J.H. BUSINESS INDIA PVT. LTD. ..... Respondent

Through: Mr.Rahul Chaudhary, Sr.Standing Counsel with Ms.Lakshmi Gurung, Advocate for the Appellants.
Mr. Shashwat Bajpai and Mr. Sharad Agarwal, Advocates for the Respondent.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

JUDGMENT

% **17.07.2017**

Dr. S. Muralidhar

1.These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act') arise out of similar set of facts involving similar questions of law and are accordingly disposed of by this common judgment.

2. In five of these appeals i.e., ITA Nos. 605, 606, 607, 608 and 609 of 2016 for the Assessment Years ('AYs') 2001-02, 2002-03, 2004-05, 2006-07 and 2007-08, respectively, the Respondent/Assessee is Surya Vinayak Industries. These appeals are directed against the common impugned order dated 6th October, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3158-3162/Del./2011.

Questions urged

3. In ITA Nos. 605-608 of 2016, the questions of law that are sought to be urged by the Revenue are as under:

> (i) Whether the ITAT erred in law and on facts in holding that the assessment framed by the Assessing Officer (AO) under Section 153A is barred by limitation?
>
> (ii) Whether the order passed by the ITAT is perverse and not sustainable under law?

In ITA No. 609/2016 there is slight change in question (i) above inasmuch as the order of the AO is under Section 143 (3) of the Act.

4. Two of the appeals i.e. ITA Nos. 637 and 638 of 2016 are against the Respondent/Assessee, Sanjay Jain, for AYs 2005-06 and 2007-08 arising out of the common order dated 6th October, 2015 passed by the ITAT in ITA Nos. 5325/Del/2013 and 4753/Del/2011, respectively. The question of law urged in these two appeals by the Revenue are identical to the questions raised in the appeals against Surya Vinayak Industries.

5. There are four appeals viz. ITA Nos. 610, 641, 640 and 639 of 2016 for the AYs 2001-02, 2004-05, 2005-06 and 2006-07, respectively, involving the Respondent/J.H. Business India Pvt. Ltd. These appeals are also directed against the common order dated 6th October, 2015 passed by the ITAT in ITA Nos. 3173-3176/Del/2011.

6. There is a fifth appeal filed by the Revenue (ITA 850/2016) against the same common order passed by the ITAT in ITA No. 3177/Del/2011 for AY 2007-08. However, that appeal is stated to be still lying in defect and has not been listed before the Court.

7. The common questions of law urged by the Revenue in these four appeals involving J.H. Business India Pvt. Ltd. read as under:

> (iii) Whether the ITAT erred in law and on facts in holding that the assessment framed by AO under Section 153C read with Section 143(3) is barred by limitation as per Section 153B of the Act?
>
> (iv) Whether the order passed by the ITAT is perverse and not sustainable under law?

8. ITA No. 290/2016 filed by the Revenue against the Assessee, PPC

Business and Products Pvt. Ltd., is directed against the order dated 14th August, 2015 passed by the ITAT in ITA No. 226/Del/2012 for AY 2006-07. The questions of law urged by the Revenue in these appeals read as under:

> (v) Whether learned ITAT erred in allowing the additional ground as raised by the Assessee in regard to the limitation of Assessment made under Section 153C ignoring the fact that same has not been raised before the Appellate Authority?
>
> (vi) Whether the ITAT erred in allowing the additional ground raised by the Assessee in regard to limitation of assessment made under Section 153C of the Act by following its own finding the case of *ACIT v. J.H. Invest P. Ltd.* being ITA No. 1297-1297/Del/2011 by wrongly applying Section 153B (1) for the assessment under Section 153B (1) for assessment under section 153A ignoring the fact that the present case is related to Section 153C and the time limit for completion of Assessment is 31st December, 2009 which is within the time limit for the assessment order dated 24th December, 2009.

Background facts

9. The background facts in these appeals are that on the basis of Authorization dated 20th March, 2007 issued under Section 132(1) of the Act, a search was commenced on 21st March, 2007 in the office premises of Rim Zim Valley Products Pvt. Ltd., J.H. Invest Pvt. Ltd., Aakriti International; M/s JH Business and Products Pvt. Ltd. and Surya Vinayak Industries Group. The Court has been shown two of the authorisations, both dated 20th March, 2007 in regard to the above entities which were to be searched. One authorisation was for the search to be undertaken at Zone H - 4/5, Plot No. 53-55, Suvidha Kunj, Pitam Pura, Delhi-110034 (hereinafter referred to as 'Pitam Pura premises') and the other for the premises at I-42, Ashok Vihar, Phase- I, New Delhi (hereinafter referred to as 'Ashok Vihar

premises').

The authorisations and panchnamas

10. In the authorizations, both the premises were shown to be in possession of Mr. Sanjay Jain and Mr. Rajiv Jain, both being the directors of the above entities including J.H. Invest Pvt. Ltd. The copies of *panchnamas* produced before the Court relevant to both the above authorizations show that the search at the Pitam Pura premises commenced on 21st March, 2007 at 8:45 am and were closed on 22nd March, 2007 at 6:00 am as *'temporarily concluded for the day to be commenced subsequently for which purpose seals were placed."* The second *panchnama* in regard to the Authorization for search at Pitam Pura premises is dated 23rd March, 2007. It states that the search commenced on 23rd March, 2007 at 2:15 pm in the Pitam Pura premises and were finally concluded on the same day at 5:55 pm. The Authorization for search for the Pitam Pura premises bears the E. No. 0069.

11. What is also important to note is that both the *panchnamas* relevant to this authorization state that the warrant was in the case of the above entities i.e., Rim Zim Valley Products Pvt. Ltd., J.H. Invest Pvt. Ltd., Aakiriti International, J.H. Business and Products Pvt. Ltd., Surya Vinayak Industries Group, Mr. Sanjay Jain and Mr. Rajiv Jain.

12. Turning now to the Authorization for the search of Ashok Vihar premises, which bears the E. No. 0068, the first *panchnama* is dated 22nd March, 2007 and notes that the warrant was in the case of Sanjay Jain and Rajiv Jain. In para 8 of this *panchnama*, it is stated that the search commenced on 21st March, 2007 at 8:33 pm and closed on 22nd March, 2007

at 5:30 pm as 'temporarily concluded'. It is stated that the 4 + 2 seals were placed on the wooden cupboard in the bedroom of Mrs Shail Kumari Jain. A second *panchnama* in relation to the Authorization E. No. 0068 relating to the Ashok Vihar premises notes in para 8 that the search commenced on 15th May, 2007 at "....... pm" and closed on 15th May, 2007 at 6:45 pm as 'finally concluded'. The second *panchnama* notes that the warrants having been issued in the case of all the above entities. There is an acknowledgment by Ms. Neena Jain of having received the second *panchnama* with annexures bearing the date of 15th May, 2007. She has also signed on this date. The warrant of authorization bears E. No. 0068. It appears that the jewellery belonging to Ms. Neena Jain at the Ashok Vihar Premises was valued on 21st March, 2007 itself. A copy of the valuation report is placed on the record.

13. The Court has also been shown two other authorizations bearing E. Nos. 0070 and 0071 both dated 21st March, 2007. The authorization having E. No. 0070 pertains to the search of the Locker No. 71 (Key No. 40) with the Federal Bank at Pitam Pura in the name of Ms. Neena Jain. This has two panchnamas – the first one dated 21st March, 2007 shows that the warrant was in the case of Sanjay Jain, Rajiv Jain and Neena Jain and that the raids commenced on 21st March, 2007 at 3:30 pm and concluded at 3:50 pm on the same date as "temporarily concluded for the day to be commenced subsequently for which purposes four seals were placed on locker No. 71..." The second panchnama is dated 15th May, 2007 which shows that the searches commenced at 1:55 pm on that date and were finally concluded at 2:25 pm on the same date. The second panchnama also bears the signatures

of Ms. Neena Jain by way of acknowledgment of having received a copy thereof.

14. The Authorization bearing E. No. 0071 was for the search at Locker No. 344 (Key No. 24) with the Oriental Bank of Commerce, Pitam Pura in the name of Ms. Neena Jain, Mr. Rajiv Jain and Mr. Sanjay Jain. Here again, there are two *panchnamas* – one dated 21st March, 2007 which shows that the search commenced at 4:25 pm and concluded at 5:15 pm on the same date i.e., 21st March, 2007; the second *panchnama* is dated 15th May, 2007 which shows that the search commenced on that date at 2:45 pm and concluded on the same date at 4:30 pm. The second *panchnama* again bears the signatures of Ms. Neena Jain.

15. In each of these instances, on the first day of search a restraint order was passed under Section 132 (3) of the Act in respect of the jewellery items of Ms. Neena Jain and Ms. Shail Kumari Jain kept in some wooden cupboard in the premises. There were also a restraint order communicated to the managers of some of the banks in respect of the lockers and bank accounts of the Respondents herein. At the time of the second visit, the aforementioned restrain order was lifted.

16. A careful perusal of the *panchnamas* in respect of the authorization bearing E. No. 0068 and 0069 shows that no fresh material as such was found during the second visit on 15th May, 2007. A formal seizure of the jewellery of Ms. Neena Jain was recorded in the second *panchnama* which also notes that there was already a valuation report dated 21st March, 2007 in respect of those very jewellery items. No *de facto* seizure actually took place

on that date i.e., 15th May, 2007. For all practical purposes, therefore, the search concluded on 22nd March, 2007 at 6:00 am as far as Authorization E. No. 0069 is concerned and 22nd March, 2007 at 5:30 am as far as Authorization E. No. 0068 is concerned.

Section 153B

17. The assessment in each of these cases pursuant to the searches was concluded on 31st December, 2009. Clause (ii) of the second proviso to Section 153B (1) which provides for time limit for completion of the assessment under Section 153A. The relevant portions prior to the amendment of Section 153B read thus:

> "**153B. Time limit for completion of assessment under section 153A.**
>
> (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—
>
> (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;
>
> (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:
>
> **Provided** that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books

of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2004 but before the Ist day of April, 2010,-

(i) The provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

(ii) The period of limitation for making the assessment or reassessment in case of other person referred to in Section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorizations for search under Section 132 or for requisition under Section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

...

18. The above provisions require the Assessing Officer ('AO') to frame the assessment within 21 months from the date from the end of the financial year in which the last of the authorizations was executed as per Section 132 of the Act. The authorization mentioned in Section 153B is deemed to have been executed when the last *panchnama* is drawn in relation to any person in whose case the warrant of authorization has been issued. This is in terms of Section 153B (2) (a) of the Act.

19. The word '*panchnama*' is not defined in the Act. Even the Code of Criminal Procedure, 1973, the provisions of which relating to search and seizure have been made applicable to the searches and seizures under Section 132 of the Act, does not define the said word. It, however, prescribes the format in which the *panchnama* is required to be drawn up.

The decision in S. K. Katyal's case

20.1 In the context of the search leading to a block AY under Section 158BE of the Act, this Court in ***CIT v. S.K. Katyal (2009) 308 ITR 168 (Del)*** made the following observations:

> These provisions demonstrate that a search and seizure under the said Act has to be carried out in the presence of at least two respectable inhabitants of the locality where the search and seizure is conducted. These respectable inhabitants are witnesses to the search and seizure and are known as *panchas*. The documentation of what they witness is known as the panchnama. The word *panchnama*, refers to a written document. Its type is usually determined by the word which is combined with it as a suffix. Examples being, *nikah-nama* (the written muslim marriage contract), *hiba-nama* (gift deed, the word 'hiba' meaning - gift), *wasiyat-nama* (written will) and so on. So a panchnama is a written record of what the panch has witnessed. In *Mohan Lal v. Emperor: AIR 1941 Bombay 149*, it was observed that the panchnama is merely a record of what a panch sees...
>
> Similarly, the Gujarat High Court in the case of *Valibhai Omarji v. The State AIR 1963 Guj 145* noted that "(a) *panchnama* is essentially a document recording certain things which occur in the presence of *Panchas* and which are seen and heard by them." Again, in *The State of Maharashtra v. Kacharadas D. Bhalgar (1978) 80 Bom LR 396*, a *panchnama* was stated to be a memorandum of what happens in the presence of the *panchas* as seen by them and of what they heard.
>
> We have examined the meaning of the word "*panchnama*" in some detail because it is used in Explanation 2(a) to Section 158BE of the

said Act although it has not been defined in the Act. A *panchnama*, as we have seen is nothing but a document recording what has happened in the presence of the witnesses (*panchas*). A panchnama may document the search proceedings, with or without any seizure. A *panchnama* may also document the return of the seized articles or the removal of seals. But, the *panchnama* that is mentioned in Explanation 2(a) to Section 158BE is a *panchnama* which documents the conclusion of a search. Clearly, if a *panchnama* does not, from the facts recorded therein, reveal that a search was at all carried out on the day to which it relates, then it would not be a *panchnama* relating to a search and, consequently, it would not be a *panchnama* of the type which finds mention in the said Explanation 2(a) to Section 158 BE."

20.2. In the above case, ***CIT v. S.K. Katyal*** *(supra)*, the first of the searches pursuant to the authorization issued on 16th November 2000 under Section 132 of the Act, commenced on 17th November, 2000 at 8:00 am was 'temporarily concluded' at 7:00 pm on the same date. Seven seals were placed on the cash box in one of the rooms of the Assessee. It was an admitted position that the contents of the sealed cash box "were nothing but the jewellery listed and valued as per Annexure- 5 to the *panchnama*". A restraint order was passed on that date in respect of the sealed cash box. Subsequently, on 3rd January, 2001, the restraint order was revoked and the keys of the almirah and safe (cash box) were returned to the Assessee. Another *panchnama* was drawn up on that date.

20.3 Under the heading "The following were found but were not seized" in the printed format *panchnama*, it was written in hand:

"Jewellery worth Rs. 6,05,731/- as per page 1 of Annexure-5 of Panchnama dated November 17 2000."

20.4 In this regard, the Court in ***CIT v. S.K. Katyal*** (*supra*) observed as

under:

> "This makes it evident that nothing was found on 03.01.2001, because the jewellery shown to be found on 03.01.2001 had already been found on 17.11.2000 and had even been valued as per Annexure-5 to the panchnama of 17.11.2000.

20.5 The Court in para 16 then observed as under:

> This discussion leads us to the question - was the panchnama of 03.01.2001 of the type mentioned in the said Explanation 2(a)? From the facts narrated above, it is clear that the *panchnama* of 03.01.2001 itself reveals that nothing was seized on that date. Nor was anything found on that date. In fact, no search was conducted. The jewellery that was put in the cash box of the almirah had already been searched, found, inventorised and valued by the DVO on 17.11.2000 itself. Nothing remained to be searched thereafter. And, in fact, no further search was conducted after 17.11.2000. Obviously, nothing else could be found. All that was done on 03.01.2001, in the presence of the witnesses (*panchas*), was that the seals were removed from the cash box and the almirah and the keys were handed back to the assessee. Essentially, the revocation of the restraint order was given effect to. This is exactly what the Tribunal found as a fact and meant when it concluded that the *panchnama* dated 03.01.2001 was merely a release order and could not extend the period of limitation.

20.6 The Court in ***CIT v. S.K. Katyal*** (*supra*) then undertook a detailed discussion of the law on the subject including the decisions in ***G.M. Agadi v. The Commercial Tax Officer, Belgaum [1973] 32 STC 243 (Kar.)***; ***C. Balakrishnan Nair (Dr.) v. CIT (1999) 237 ITR 70 (Ker); CIT v. Mrs Sandhya P. Naik (2002) 253 ITR 534 (Bom); CIT v. Sarb Consulate Marine Products P. Ltd. (2007) 294 ITR 444; CIT v. Deepak Aggarwal (2009) 308 ITR 116 (Del.)*** as well as ***VLS Finance Ltd v. CIT (2007)289 ITR 286 (Del)***. The conclusions drawn by the Court in ***CIT v. S.K. Katyal*** (*supra*) were as under:

> 26. These decisions clearly establish (i) a search is essentially an invasion of the privacy of the person whose property or person is subjected to search; (ii) normally, a search must be continuous; (iii) if it cannot be continuous for some plausible reason, the hiatus in the search must be explained; (iv) if no cogent or plausible reason is shown for the hiatus in the search, the second or resumed search would be illegal; (v) by merely mentioning in the *panchnama* that a search has been temporarily suspended does not, ipso facto, continue the search. It would have to be seen as a fact as to whether the search continued or had concluded; (vi) merely because a *panchnama* is drawn up on a particular date, it does not mean that a search was conducted and/or concluded on that date; (vii) the *panchnama* must be a record of a search or seizure for it to qualify as the *panchnama* mentioned in Explanation 2(a) to section 158BE of the said Act.

21. Incidentally, Explanation 2(a) to Section 158 is *in pari materia* with clause 2(a) of Section 153B.

Analysis and reasons

22. In light of the above decision, if the facts of the present case are examined, it is seen that as far as Authorization E. No. 0069 is concerned, the search concluded on 22nd March, 2007 itself. The only question is whether because of Authorization E. No. 0068 where a second visit was made to the Ashok Vihar premises on 15th May, 2007 and only on that date was it noted in the *panchnama* that the search was "finally concluded", the period of limitation for completing the assessment would begin to commence from the last date of the financial year in which the search concluded. If this case of the Revenue were to be accepted, then the limitation period for completing the assessment stood extended up to 31st December, 2009. Factually, in the present case, the assessments were completed on 24th December/31st December, 2009 whereas if the Assessee's

case – that the search concluded on 22nd March, 2007 – is correct, then the assessment had to be completed by 31st December, 2008.

23. What happened on 15th May, 2007 is apparent from the second *panchnama* relating to the search authorization E. No. 0068. In paragraph 5(b) of the panchnama, the title is "The following were found but not seized". Under Sub-clause (ii) thereunder, it is stated "Item Nos. 1 to 13 of Ms. Preeti Jain (wife of Rajiv Jain) as per the valuation report in jewellery items dated 21st March, 2007 and S. Nos. 6, 7,9, 10,12,14,17, 21, 22, 23, 24 right up to 30, 33, 35 and on person items were released". Therefore, all that happened on 15th May, 2007 was that the factum of valuation reports having been prepared already on the previous date i.e., 21st March, 2007 was noted and the jewellery items were released. Under paragraph 5(a) under the title "The following were found and seized", under sub-clause (iv) it is stated that 'jewellery, ornaments etc. which have been inventoried separately for each place from where recovered as per Annexure-J (4 sheets vide valuation report dated 21st March, 2007 Item Nos. 1, 2, 3, 4, 5, 8, 11, 13, 15, 16, 18, 19, 20, 25, 26, 31, 32, 34, 36 and 37 seized." In fact, there was no seizure because nothing new was found. All the other items which were already valued on 21st March, 2007 and for which valuation report was already prepared were shown as seized but in fact were not seized. The net result is that on 15th May, 2007 nothing was found which had not already been found by the Department on the first day i.e., 21st March, 2007.

24. The Court is not prepared to accept the plea of the Revenue that merely because a *panchnama* was drawn up on 15th May, 2007 showing that the

search was 'finally concluded' on that date, it postponed the period of limitation in terms of Section 153B (2) (a) of the Act. It had to be the "last *panchnama* drawn in relation to any person in whose case the warrant of authorization has been issued". The last *panchnama*, no doubt, is dated 15th May, 2007 but what it records is the seizure of the jewellery items not of any of the persons searched but the wives of one of the directors i.e., of Ms. Neena Jain who was not even a director of any of these entities. Therefore, even assuming that the jewellery of Ms. Neena Jain was seized under *panchnama* of 15th May, 2007, as far as the searched entities are concerned, the Revenue cannot take advantage of Section 153B (2) (a) to contend that the period of limitation in respect of them stands extended for completing of assessment up to 31st December, 2009.

The decision in C Ramaiah Reddy

25.1 In this context, the Court would like to refer to the decision of the Karnataka High Court in ***C. Ramaiah Reddy v. Assistant Commissioner of Income Tax (2011) 339 ITR 201 (Kar.)*** where these very provisions were examined in *extenso*. There the Court took note of the decision of this Court in ***CIT v. S.K. Katyal*** (*supra*) and observed as under:

> The next question for consideration is, when once the authorized officer in pursuance of the authorization enters the premises and starts searching, when exactly the said search comes to an end. It is contended on behalf of the Revenue that a discretion is vested with such authorized officer to complete the search, draw a *panchnama* stating that the search is completed on the day he begins the search or if for any reason it is not possible to complete such search, he can pass a restraint order, prohibitory order and when fix another date for continuing such search. Thereafter, at his convenience and discretion, he can visit the premises again and continue the search in respect of

> the subject matter of the restraint order and prohibitory order and he can also make a fresh search. Every visit made by the authorized officer for inspection is a search under the Act and such a search comes to an end only when the *panchnama* is written and in the panchnama it is expressly stated that it is finally concluded. It is in the light of the said contentions it is necessary to consider when the search begins and when the search ends in law. This aspect has drawn attention of the various courts in this country and the law point is well settled.

25.2 The Court in ***C. Ramaiah Reddy v. Assistant Commissioner of Income Tax*** (*supra*) then proceeded to discuss the case law and held as under:

> The law does not contemplate the authorised officer to set out in any of the *Panchnamas* that he has finally concluded the search. If for any reason the authorised officer wants to search the premises again, it could be done by obtaining a fresh authorisation. There is no prohibition in respect of the same premises. It is open to the empowered authority to issue authorisation, but when the authorisation is issued once, the authorised officer cannot go on visiting the premises under the guise of search. Therefore, it is clear once in pursuance of an authorization issued the search commences, it comes to an end with the drawing of a *Panchnama*. When the authorized officer enters the premises, normally, the *Panchnama* is written when he comes out of premises after completing the job entrusted to him. Even if after such search he visits the premises again for investigation or inspection of the subject-matter of restraint order or prohibitory order, if a *Panchnama* is written, that would not be the *Panchnama* which has to be looked into for the purpose of computing the period of limitation. But, such a *Panchnama* would only record what transpires on a re-visit to the premises and the incriminating material seized would become part of the search conducted in pursuance of the authorisation and would become the subject-matter of block assessment proceedings. But, such a *Panchnama* would not extend the period of limitation. It is because the limitation is prescribed under the statute. If proceedings are not initiated within the time prescribed, the remedy is lost. The assessee would acquire a valuable right. Such a right cannot be at the mercy of the officials,

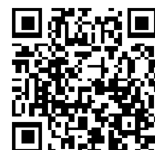
> who do not discharge their duties In accordance with law. The procedure prescribed under Section 132 of the Act is elaborate and exhaustive. The said substantive provision expressly provides for search and seizure. In the entire provision, there is no indication of that search once commenced can be postponed. What can be postponed is only seizure of the articles. Therefore, once search commences it has to come to an end with the search party leaving the premises whether any seizure is made or not. The limitation for completion of block assessment is expressly provided under section 158BE which clearly declares that it is the execution of the last of authorisations which is to be taken into consideration. The word "seizure" is conspicuously missing in the said section. The same cannot be read into the section for the purpose of limitation. Then, it amounts to rewriting the section by the Court, which is impermissible in law.

25.3 The Karnataka High Court in ***C. Ramaiah Reddy*** (*supra*) also took note of the Circular No.772 dated 23rd December, 1998 in relation to the definition of the word 'execute' and then observed as under:

> "The question arises as to whether execution of a warrant of authorisation or requisition refers to the conclusion of the proceedings under Section 132 and/or s. 132A or it refers only to the execution of the warrant even though as a result of such execution the proceedings under Section 132 or 132A are yet to be completed. The latter situation will include a case in which a restraint order under Section 132 (3) is passed. In such a case it can be said that though the warrant of authorisation has been executed, proceedings under Section 132 (3) are pending. Since the word, "execute", also means "to complete" one has to wait for conclusion of the proceedings under Section 132 (3) for the purpose of computation of limitation under Section 158BE (1) and the period of the one year has to be computed from the end of the month in which the proceedings under Section 132 (3) are concluded. If there is more than one warrant, limitation will be counted from the execution of the last one.
>
> A contrary view is as much possible if one were to consider the spirit of the scheme which envisages expeditious disposal of the search

> cases and it would be reasonable to interpret that execution of warrant is not tantamount to completion of proceedings under Section 132 or 132A. The period during which the proceedings under Section 132 (3) remained pending has to be excluded for the purpose of counting limitation of one or two years under Section 158BE. Otherwise, it may lead to absurd results as it may take several years before restraint under Section 132 (3) is lifted and it may, thus, extend the period of one or two years by all those years during which proceedings under Section 132 (3) remained pending. It may be agreed against this view that S. 132 (8A) takes care that there is no extension of proceedings under Section 132 (3) and that the view cannot be taken without doing violence to the language of the Act.
>
> Therefore, the Explanation added to remove a doubt cannot be construed as a provision providing a longer period of limitation than the one prescribed in the main section. When under the scheme of the section there is no indication of a second search on the basis of the same authorisation issued under the said provision, the legislative intention is clear and plain and the interpretation to be placed by the courts should be in harmony with such an intention. Therefore, one authorisation is to be issued in respect of one premises in pursuance of which there can be only one search and such a search is concluded, when the searching party comes out of the premises, which is evidenced by drawing up a *panchnama*. When there are multiple places to search and when multiple authorisations are issued, on different dates or on the same date or in respect of the same premises more than one authorisation is issued on different dates, the last *panchnama* drawn in proof of conclusion of search in respect of the authorisation is to be taken into consideration for the purpose of limitation for block assessment."

26. In the considered view of the Court, the above decision in ***C. Ramaiah Reddy*** (*supra*) puts it beyond the pale of doubt that merely visiting the premises on the pretext of concluding the search but not actually finding anything new for being seized cannot give rise to a second *panchnama*. In such event, there would be no occasion to draw up a *panchnama* at all. In



the present case, the Court is satisfied that the second visit by the search party to the Ashok Vihar premises on 15th May, 2007 did not result in anything new being found that belonged to any of the searched parties. The second visit and the *panchnama* drawn up on that date cannot lead to postponement of the period for completion of assessment with reference to Section 153B (2) (a) of the Act.

The decision in JH Finvest

27. Mr. Shashwat Bajpai, learned counsel appearing for the Assessees, pointed out that this Court by an order dated 30th November, 2015 in the batch of ITA 27/2015 (*CIT v. J.H. Finvest Pvt. Ltd.*) which involved an identical set of authorizations in relation to the same searches which had commenced on 21st March, 2007 in respect of three of three entities, namely, J.H. Finvest Pvt. Ltd., Texefx Marble Industries (formerly known as J.H. Business & Products Pvt. Ltd.) and SVIL Mines Ltd., dismissed the appeal of the Revenue. He, accordingly, submitted that the above order should automatically result in the dismissal of the present appeals as well. However, the above order of this Court was sought to be distinguished by Mr. Chaudhary appearing for the Revenue by pointing out that the said decision did not take note of the fact that there were two authorizations for two premises: at Ashok Vihar and at Pitam Pura and that the second *panchnama* dated 15th May, 2007 was in fact in relation to the Ashok Vihar premises. As already discussed hereinbefore, the above distinction is to no avail as far as the case of the Revenue is concerned.

28. Finally, it was contended by Mr Chaudhary that the decision in ***VLS***

Finance Ltd. v CIT (*supra*) supports the case of the Revenue and, therefore, the period of limitation for passing the assessment order should be calculated from 15th May, 2007. In its order in the case of ***CIT v. JH Invest Pvt. Ltd.*** (*supra*), this Court took note of the above decision. In any event, the Court has again examined it in detail. The Court notes that there were as many as 16 searches conducted in VLS Finance within a span of two months. The search and seizure operations commenced on 22nd June, 1998 and continued till 5th August, 1998. Sixteen *panchnamas* were drawn up in respect of the visits made. There was no occasion when a *panchnama* did not record a seizure. Therefore, the said decision being distinguishable on facts is of no assistance to the Revenue.

Conclusions

29. For the aforementioned reasons, the Court finds that the decision of the ITAT in the appeals involving Surya Vinayak Group companies does not suffer from any legal infirmity. Since the ITAT has only applied the earlier decisions of this Court, no substantial question of law arises from the impugned order of the ITAT.

30. As regards the appeals involving J.H. Business India Pvt. Ltd., where proceedings were sought to be initiated under Section 153C of the Act, it is plain that in view of the above conclusion in the Surya Vinayak cases, the assessment framed by the AO under Section 153C read with Section 143(3) is barred by limitation. The search stood concluded *qua* J.H. Business India Pvt. Ltd. on 22nd March, 2007 itself. This, also, therefore, has to lead to the dismissal of the Revenue's Appeal even as regards PPC Business Pvt. Ltd.

where Section 153C of the Act was involved.

31. All the appeals are, accordingly, dismissed but in the circumstances, with no orders as to costs.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 17, 2017
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